Jayakumari a/p Arul Pragasam v Suriya Narayanan a/l V Ramanathan

HIGH COURT (KUALA LUMPUR) — PETITION NO S5-33-155-96
JAMES FOONG J
29 MARCH 1996

Civil Law Act *— Common law — Circumstances under which common law and equitable rights not available — Whether British Domestic Violence and Matrimonial Proceeding Act 1976 and English authorities relating thereto are binding in Malaysia — Civil Law Act 1956 s 3*

Civil Procedure *— Jurisdiction — Matrimonial causes — Application to evict husband from matrimonial home — Whether court has jurisdiction to make such an order — What principles should be applied in granting such relief*

Family Law *— Matrimonial property — Application to evict husband from matrimonial home — Factors to be considered*

The petitioner was married to the respondent 19 years ago by way of a Hindu customary marriage and later they had their marriage registered under the Law Reform (Marriage and Divorce) Act 1976 ('the Act'). There were two children to the marriage. The family resided at the matrimonial home together with the petitioner's mother. On 27 February 1996, the petitioner left the matrimonial home with her mother and children and were residing temporarily in her cousin's house as the respondent had assaulted and threatened to kill her when he found out that she wanted a divorce. On 4 March 1996, her solicitors filed a petition for judicial separation and a summons in chambers ('encl 8') was taken out wherein she sought reliefs from the court which were: (i) that the respondent be restrained by himself, or his servants, or agents from molesting, harassing, threatening, abusing, assaulting or in any way disturbing her; and (ii) that the respondent be ordered to vacate the matrimonial home and not to enter therein until further order. When the application came before the court on 18 March 1996, the court without any difficulty secured a consent from the respondent in regard to the first relief sought by the petitioner on non-molestation and harassment. However, the court had to proceed to determine the second relief claimed by the petitioner in encl 8. The issues to be decided here were: (i) whether the court had jurisdiction to grant this type of relief; and (ii) what principles are to be applied in granting such a relief.

Held, allowing the application for the second relief:

(1) Under the Act, it is obvious that there is no provision for such relief. Further, the British Domestic Violence and Matrimonial Proceeding Act 1976 and the English authorities decided thereunder are not binding here as they are based on statutory law passed in 1976 whereas s 3 of the Civil Law Act 1956 provides that only English common law and equity as administered

in England on 7 April 1956 is binding on Malaysian law (see pp 426C–D, H–I, 427A ; *HG Warren v Tay Say Geok & Ors* [1965] 1 MLJ 44 and *Chan Ah Moi v Phang Wai Ann* [1995] 3 MLJ 130 not followed).

(2) The court has jurisdiction to evict a husband from the matrimonial home pending the trial of the action, if there were evidence based on considered principles to do so, otherwise the wife would be bullied out of her remedy or deterred by pressure from seeking the help of the court. Moreover, a wife was not without rights in the matrimonial home even though it belonged to the husband, and her right to stay in the matrimonial home was presumed by law to have been conferred upon her by the husband flowing from the concept of marriage. Therefore, the court has jurisdiction to grant relief to evict an errant husband from a matrimonial home (see pp 427C–F, 428A; *Silverstone v Silverstone* [1953] P 174, *Bendall v McWhirter* [1952] 2 QB 466 and *Gurasz v Gurasz* [1969] 3 All ER 822 followed).

(3) The factors or principles to be considered in a claim to evict a husband from a matrimonial home are whether such an order is necessary for the protection of the wife and in considering this, the conduct of the parties as well as their position and interest, including the children (if any), must be taken into account. It is only when the conduct of the husband is so outrageous that it is impossible for both the parties to live together that such an application is granted. Hence, looking at the facts of the present case, it was obvious that the conduct of the respondent was so outrageous that an application to evict the him from the matrimonial home could be granted by the court. It was impossible for the petitioner to live in the same house as the respondent (see pp 428C–F, 429A–C; *Akingbehin v Akingbehin* (1964) 108 SJ 520, *Gurasz v Gurasz* [1969] 3 All ER 822, Hall v Hall [1971] 1 All ER 762 and *Jones v Jones* [1971] 3 All ER 1201 followed).

Per curiam:

The Domestic Violence Act 1994 ('the DVA') although passed in Parliament on 24 June 1994 is not yet the law of this country because the requirement of s 1(1) of the DVA has not been fulfilled as the minister charged with the responsibility for the implementation of the DVA has not given her notification in the Gazette of the coming into force of the DVA (see p 426E–G).

[Bahasa Malaysia summary

Pempetisyen telah berkahwin dengan responden 19 tahun yang lalu mengikut adat Hindu dan kemudiannya mereka mendaftarkan perkahwinan mereka mengikut Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 ('Akta itu'). Mereka memperolehi dua orang anak hasil daripada perkahwinan itu. Keluarga itu menetap di kediaman suami isteri bersama ibu pempetisyen. Pada 27 Februari 1996, pempetisyen telah meninggalkan kediaman suami isteri itu dengan ibu dan anak-anaknya dan menetap sementara di rumah

sepupunya kerana penentang telah menyerang dan mengugut untuk membunuh pempetisyen setelah mengetahui bahawa pempetisyen inginkan perceraian. Pada 4 Mac 1996, peguam pempetisyen telah memfailkan petisyen untuk pemisahan kehakiman dan satu saman dalam kamar ('lampiran 8') telah dikeluarkan di mana pempetisyen memohon relief daripada mahkamah iaitu: (i) supaya penentang ditahan sama ada secara sendiri atau melalui wakil atau ejennya daripada mencabul, mengganggu berulang kali, mengugut, mendera, menyerang atau mengacaunya dalam apa-apa cara sekalipun; dan (ii) supaya responden diperintahkan untuk mengosongkan kediaman suami isteri dan tidak memasukinya sehingga diperintahkan sebaliknya. Apabila permohonan ini dihadapkan ke mahkamah pada 18 Mac 1996, mahkamah tanpa apa-apa bantahan daripada penentang menerima persetujuan penentang berkenaan relief pertama yang dipohon oleh pempetisyen mengenai halangan daripada mencabul dan menganggu berulang kali. Walau bagaimanapun, mahkamah perlu memutuskan tentang relief kedua yang dipohon oleh pempetisyen di dalam lampiran 8. Isu-isu yang berbangkit di sini adalah: (i) sama ada mahkamah mempunyai bidang kuasa untuk memberi relief jenis ini; dan (ii) apakah prinsip-prinsip yang harus dipakai dalam memberikan relief sebegini.

Diputuskan, membenarkan permohonan untuk relief yang kedua:

(1) Di bawah Akta itu, adalah nyata bahawa tiada peruntukan untuk relief sebegini. Juga, Akta Keganasan Rumah Tangga dan Prosisding Perkahwinan 1976 di United Kingdom dan autoriti autoriti Inggeris yang berkaitan dengannya tidak mengikat mahkamah tempatan kerana kesemuanya berdasarkan undang-undang statutori yang diluluskan pada tahun 1976 manakala s 3 Akta Undang-Undang Sivil 1956 memperuntukkan bahawa cuma common law dan ekuiti Inggeris seperti yang digunakan di England pada 7 April 1956 mengikat undang-undang Malaysia (lihat ms 426C–D, H–I, 427A; *HG Warren v Tay Say Geok & Ors* [1965] 1 MLJ 44 dan *Chan Ah Moi v Phang Wai Ann* [1995] 3 MLJ 130 tidak diikut).

(2) Mahkamah mempunyai bidang kuasa untuk mengusir suami dari kediaman suami isteri sementara menunggu kes itu dibicarakan, jika terdapat bukti berdasarkan prinsip-prinsip yang dipertimbangkan untuk berbuat demikian, jika tidak isteri itu akan dibuli daripada memperolehi remedinya atau dihalang oleh kerana tekanan daripada mendapatkan pertolongan mahkamah. Lagipun, seseorang isteri bukannya tidak mempunyai hak dalam kediaman suami isteri walaupun rumah itu kepunyaan suami, dan haknya untuk menetap di situ adalah dianggap di sisi undang-undang sebagai telah dikurniakan ke atasnya oleh suaminya berikutan daripada konsep perkahwinan. Maka, mahkamah mempunyai bidang kuasa untuk memberikan relief untuk mengusir suami yang bersalah dari kediaman suami isteri itu (lihat ms 427C–F, 428A; *Silverstone v Silverstone* [1953] P 174, *Bendall v McWhirter* [1952] 2 QB 466 dan *Gurasz v Gurasz* [1969] 3 All ER 822 diikut).

(3) Faktor-faktor atau prinsip-prinsip yang perlu dipertimbangkan dalam tuntutan untuk mengusir seorang suami dari kediaman suami isteri adalah sama ada perintah sebegitu diperlukan untuk melindungi isteri dan dalam mempertimbangkan perkara itu, tingkah laku pihak-pihak yang terlibat serta kedudukan dan kepentingan mereka, termasuk anak-anak (jika ada), mestilah diambil kira. Hanyalah apabila kelakuan dan tingkah laku suami itu adalah begitu keterlaluan sehingga menjadi mustahil untuk kedua-dua pihak hidup bersama permohonan sebegitu akan dibenarkan. Oleh itu, melihat fakta-fakta kes ini, ia adalah jelas bahawa tingkah laku penentang adalah begitu keterlaluan sehinggakan permohonan untuk mengusirnya dari kediaman suami isteri itu boleh dibenarkan oleh mahkamah. Ia adalah mustahil untuk pempetisyen hidup dalam rumah yang sama bersama penentang (lihat ms 428C–I, 429A–C; *Akingbehin v Akingbehin* (1964) 108 SJ 520, *Gurasz v Gurasz* [1969] 3 All ER 822, *Hall v Hall* [1971] 1 All ER 762 dan *Jones v Jones* [1971] 3 All ER 1201 diikut).

Per curiam:

Akta Keganasan Rumah Tangga 1994 ('AKR') walaupun telah diluluskan oleh Parlimen pada 24 Jun 1994 belum lagi menjadi undang-undang negara ini kerana keperluan dalam s 1(1) AKR itu belum dipenuhi sebab menteri yang bertugas mengimplementasikan AKR itu belum lagi memberikan notifikasi dalam Warta mengenai penguatkuasaan AKR itu (lihat ms 426E–G).]

Notes

For a case on circumstances where common law and equitable rights not available, see 1 *Mallal's Digest* (4th Ed, 1995 Reissue) para 2201.

For a case on jurisdiction of court in matrimonial causes, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) para 2213.

Cases referred to

Akingbehin v Akingbehin (1964) 108 SJ 520
Bendall v McWhirter [1952] 2 QB 466
Chan Ah Moi v Phang Wai Ann [1995] 3 MLJ 130
Gurasz v Gurasz [1969] 3 All ER 822
Hall v Hall [1971] 1 All ER 762
Jones v Jones [1971] 3 All ER 1201
Silverstone v Silverstone [1953] P 174
Warren, HG v Tay Say Geok & Ors [1965] 1 MLJ 44

Legislation referred to

Civil Law Act 1956 s 3
Domestic Violence Act 1994 s 47
Law Reform (Marriage and Divorce) Act 1976

A Domestic Violence and Matrimonial Proceedings Act 1976 [UK]

Balwant Singh Sidhu (*Balwant Singh Sidhu & Co*) for the petitioner.
Ravindran Neeko (*Syarikat Radhakrishnan*) for the respondent.

B **James Foong J**: The petitioner was married to the respondent some 19 years ago; initially by way of a Hindu customary marriage but in 1992 had their marriage registered under the Law Reform (Marriage and Divorce) Act 1976 ('the Act'). There are two children to the marriage, both girls aged 16 and 14 respectively. The family resided at the matrimonial home C which is a terrace house known as No 3, Jalan PJS 10/5, Subang Indah, Selangor. Residing with them is the petitioner's mother.

On 27 February 1996, the petitioner left the matrimonial home with her mother and children, and at the present moment are residing temporarily in her cousin's house. This was followed by the filing of a petition for judicial separation by her solicitors on 4 March 1996. On the same day, a D summons in chambers ('encl 8') was taken out by her solicitors wherein she seeks the following reliefs from this court:

(a) that the respondent husband be restrained by himself, or his servants, or agents from molesting, harassing, threatening, abusing, assaulting or in any way disturbing her; and E

(b) that the respondent husband be ordered to vacate the matrimonial home and not to enter therein until further order.

In her affidavit in support of this application, the petitioner claims that the respondent is a habitual gambler and an alcoholic which lead him to be an F irresponsible husband and father of the children. This also caused frequent quarrels culminating to a stage that she can no longer tolerate his behaviour. On her instructions, a solicitor's letter was issued to the respondent exploring the possibility for an agreement to present a joint petition for divorce by mutual consent. In response to this letter, the petitioner claims that she was assaulted by the respondent followed by the use of foul and abusive language G on her solicitors. The petitioner claims that things got worse when the respondent threatened to kill her, and informed the children to vacate the house for a few days as there will be a funeral taking place there. Out of fear, the petitioner left the house with her mother and the children.

The respondent denied the allegations of the petitioner and insisted H that he has been a good husband and father by providing sufficiently for his family though on a fairly low salary. He claims that he did not assault the petitioner, but instead was assaulted by the petitioner's brother who had interfered in his matrimonial dispute with the petitioner. As regards the alleged threat of murdering the petitioner, the respondent explained that it was all a mistake. What he meant was that he was going to kill I himself and the funeral in the house was actually meant for himself.

The respondent then proceeded to elaborate that he is a life insurance sales agent, and due to rising costs is forced to operate his business in the matrimonial home where there is the use of the telephone and computer. He

needs the matrimonial home and the house telephone to conduct his business since his clients are already familiar with the house address and phone number.

When this application first came before this court on 18 March 1996, this court without difficulty secured a consent from the respondent to the first relief sought by the petitioner in respect of non-molestation and harassment. It is without doubt that all parties, particularly this court, deplores all forms of violence against a person. With this issue safely out of the way, this court shall proceed to determine the second relief claimed by the petitioner in encl 8.

There are two aspects to this second relief sought. The first is whether this court has jurisdiction, and the second is what are the principles to apply. It is obvious that the Act makes no provision for such relief. In the case of *Chan Ah Moi v Phang Wai Ann* [1995] 3 MLJ 130, where a similar type of application was dealt with, the learned judge relied on the British Domestic Violence and Matrimonial Proceedings Act 1976 and cases decided thereon in the English courts to support his basis for jurisdiction giving a right to a wife to seek this type of relief. In my opinion, such English law is applicable through s 3 of the Civil Law Act 1956 ('Civil Law Act') where the Malaysian courts may apply the common law of England and the rules of equity as administered in England in so far as no other provision is made by any written law in Malaysia. The case of *HG Warren v Tay Say Geok & Ors* [1965] 1 MLJ 44 was cited in support of this proposition. It is to be noted that the learned judge also made extensive reference to our own Domestic Violence Act 1994 ('the DVA'). With the greatest of respect, it is my humble opinion that the DVA though passed in Parliament on 24 June 1994 and subsequently gazetted on 7 July 1994 did not become law on 8 July 1994 as claimed by the learned judge. Section 1(1) of the DVA expressly specifies that, 'This Act may be cited as the Domestic Violence Act 1994 and shall come into force on such date as the minister may, by notification in the Gazette, appoint.' To date, the Honourable Minister of National Unity and Social Development, who is the minister charged with the responsibility for the implementation of the DVA, has not given her notification in the Gazette of the coming into force of the DVA. The DVA is therefore not the law of this country as yet.

It is also my opinion that the British Domestic Violence and Matrimonial Proceedings Act 1976 and the English authorities decided relating thereto may not be binding in our country. This is for the reason that s 3(1)(a) of the Civil Law Act provides that:

> ... the court shall in West Malaysia or any part thereof, apply the common law of England and the rules of equity as administered in England on 7 April 1956.

The cases decided by the English courts which are quoted in *Chan Ah Moi*'s case are based on statutory law passed by Westminster of London in 1976, many years after 7 April 1956. The learned judge while quoting *Warren v Tay Say Geok & Ors* as authority in support for the importation of English law as binding into this country may be mistaken by the fact that when it was decided, the specific date limiting the applicability of English law by way of s 3 of the Civil Law Act was absent. Only in 1972, by way of a

A revision to the Civil Law Act, the specific date of '7 April 1956' was inserted limiting specifically the exact cut-off date when common law and equity of England is binding on our Malaysian law.

As the English common law prior to 7 April 1956 is applicable to our country, the English case of *Silverstone v Silverstone* [1953] P 174 may be of
B relevance as regards jurisdiction. Here, Pearce J expressed as follows at p 177:

> In my view, she has a right to be in a matrimonial home while a petition is pending before this court, and this court is entitled to protect that right and ensure that pressure is not put on a wife to abandon her petition by evicting her from the home. In the present case, I am satisfied that if I let the husband go back to the house I am really driving her out.

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By the same token, the court should have jurisdiction to evict a husband from the matrimonial home pending the trial of the action, if there is evidence based on considered principles to do so, otherwise the wife will be bullied out of her remedy or deterred by pressure from seeking the help of the court.

D This proposition of the wife's right to remain in the matrimonial home is based on the ruling by Denning LJ (as he then was) in the case of *Bendall v McWhirter* [1952] 2 QB 466, where he affirmed that a wife is not without rights in the matrimonial home even though it belongs to the husband, and her right to stay in the matrimonial home is presumed in law to have been conferred upon her by her husband flowing from the concept
E of a marriage.

This issue of jurisdiction is further confirmed by the English courts in the case of *Gurasz v Gurasz* [1969] 3 All ER 822 which is a strong persuasive authority to our laws and can even be applicable under s 47 of the Act which provides that:

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> 47 Principles of law to be applied
>
> Subject to the provisions contained in this Part, the court shall in all suits and proceedings hereunder act and give relief on principles which in the opinion of the court are, as nearly as may be, conformable to the principles on which the High Court Justice in England acts and gives relief in matrimonial proceedings.

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In the case of *Gurasz v Gurasz*, the parties being husband and wife lived with four children in a matrimonial house jointly owned by the parties. The wife due to intolerable conditions left the matrimonial home with the children. The husband remained in the house and subsequently took in another man to live with him. The wife sought relief from the court to evict
H the husband and to reinstate her possession to the house with the children. The county court judge granted her application and on appeal to the Court of Appeal, Denning MR reiterated the position of the wife's right to occupy the matrimonial home and to evict an errant husband under common law. This proposition is common law was supported by fellow panel judge,
I Edmund Davies LJ in the same case when he expressed that:

> ... that such a general power (the power to evict a husband from the matrimonial home) unquestionably existed has, if I may say so, been amply and convincingly demonstrated by Lord Denning MR.

Based on the aforesaid authorities, this court is convinced that it has

jurisdiction to entertain, and if found satisfied, to grant the second relief of the petitioner's application in encl 8. A

Having the issue of jurisdiction settled this court shall proceed to determine what principles to apply in granting such relief. There are a number of leading English authorities which are persuasive to this court on this point. The first is the case of *Akingbehin v Akingbehin* (1964) 108 SJ 520 where Willmer LJ expressed that: B

> ... mere hardship was not a ground for invoking the drastic remedy of requiring the husband to vacate the matrimonial home in which he was residing and of which he is part owner, especially in view of the hardship that would be caused to him. Such an order, he had said, might make it financially impossible for him to continue his studies. C

In that case, the wife was forced to leave the matrimonial home by the husband's act of violence. She moved to her sister's house but could not continue to reside there indefinitely. The husband was a Nigerian student who claimed that it would be financially impossible for him to continue with his studies if evicted. By a majority of 2 to 1, the wife's claim was refused. Davies LJ in his dissenting judgment felt that it would be: D

> ... a startling proposition that if the conduct of a husband was such as to drive the wife away, the court has no power to protect her in the matrimonial home.

Not long after the case of *Akingbehin v Akingbehin*, the same judge Davies LJ in *Jones v Jones* [1971] 3 All ER 1201, allowed the wife's claim to evict the husband in the English Court of Appeal with the remark that: E

> ... she (the wife) was entitled to live in the matrimonial home but it was impossible for her to return while he remained there.

In *Gurasz v Gurasz* [1969] 3 All ER 822 where the facts have been expressed earlier, Lord Denning MR is of the view that: F

> ... in an extreme case, if his (the husband's) conduct is so *outrageous* as to make it impossible for them to live together, the court will order him to go out and leave her there. (Emphasis added.)

Further elaboration on the principles to be applied is found in a later case of *Hall v Hall* [1971] 1 All ER 762 where Lord Denning MR expressed his views on this issue once again as follows: G

> But I would like to say that an order to exclude one spouse or the other from the matrimonial home is a drastic order. It ought not be made unless it is proved to be *impossible* for them to live together in the same house. It is difficult to draw the line, as is shown by the case which came before this court in 1964, *Akingbehin v Akingbehin*. There was a difference of opinion in the court. The majority of the court thought that *unpleasantness* and *inconvenience* was not a ground for ordering one spouse out. I agree. Such an order ought not be made unless the situation is *impossible*. I would add that it is important as well to have regard *to the interest of the children*. (Emphasis added.) H I

The above views were elaborated further by fellow judge, Sachs LJ, in the same case who added that:

A ... the essence of the matter for consideration is normally to determine whether such an order is necessary for the *protection of the spouse*. (Of course, that does not rule out those occasionally outstanding instances when such an order is necessary *in the interest of the children*; that can be an independent point.) (Emphasis added.)

B After considering the ratios of the above cases, I am of the opinion that factors to be considered in such a claim should be, whether such an order is necessary for the protection of the wife and in considering this, the conduct of the parties must be taken into account, so are the position and interest of the parties including the children (if any). And only when the conduct of the husband is so outrageous that it is impossible for both the C parties to live together, that an application to evict the husband from the matrimonial home is granted.

In our present case, the petitioner has claimed that she was being assaulted. Her life was even threatened when the respondent told the children to leave the matrimonial home as there would be a funeral D pending in a few days time. The respondent has attempted to explain this threat as a reference to himself committing suicide, but such an explanation, in the opinion of this court is only a feeble, shoddy and frivolous attempt to hide the real truth of the threat to the petitioner. As the petitioner has been assaulted before, coupled with the admission of the respondent that he drinks, it is not surprising that the petitioner fled from the matrimonial E home with mother and children when the threat of murder was uttered. Though the respondent has agreed to be restrained by injunction from molesting, assaulting and disturbing the petitioner, there is no assurance that serious harm or even death may not come to the petitioner if the parties are to reside together, considering that when a death threat has F been uttered, it must have at least been considered by the petitioner. Such threats should not be taken too lightly, especially in a case such as this where the pride of the respondent may be affected by the fact that he cannot match up to the expectation of the wife and that of her family's success, such as the petitioner's brother being a doctor. This factor may not be of importance in a developed welfare state of the West, but in our G country, especially within the Indian community such matters rank high in priority. When such an exposure of fear for life has been revealed by the wife, this court should not tread upon it too lightly, as the authority in the Los Angeles police force has learned in the recent case of the murdered wife of the famous American Football star, OJ Simpson.

H The children, this court was informed by counsel, are in their critical year at school where one will be sitting for her Form 5 examination and the other the Form 3. Depriving them of the use of the matrimonial home which they are accustomed to would certainly have a critical adverse effect on their studies.

I It is appropriate at this stage to compare the situation here with the circumstances in *Hall v Hall* where the wife's application to evict the husband failed. In *Hall v Hall*, the physical existence of the parties in the same house are not affected due to the size of the house which Denning LJ described as 'a large house with six bedrooms, dining room, drawing

room, study, playroom and so forth'. The husband leaves for work in the city of London where he is a successful accountant turned company director. He only returns in the evening leaving the wife to take care of the children during the day. In the opinion of the learned judge, 'this is a large house, quite sufficiently large for the parties to continue living there in a civilized manner as they have done in the past'. But here, in our case, the matrimonial home is a terrace house where one cannot miss the other while going from one part of the house to the other. There is not sufficient room even to contemplate and meditate given the number of occupants residing therein, especially when the respondent reiterated that he treats the house as his office making approximately 600 telephone calls to his clients a month from the house phone.

Within the circumstances as described above, this court on the balance of probability is of the firm opinion that it is impossible for the petitioner to live together in the same house as the respondent.

The respondent pleaded that he is not a man of means earning approximately RM600 a month as a life insurance agent. However, he seems to have miscalculated when this income could not be sufficient to meet his own disclosed expenditure on a per month basis. He claims that he spends RM450 on tuition fees for his children alone while concurrently providing a servant for the family. Taking the servant's wages to be a bare minimum of RM200, there would be hardly any money left for general expenses, food and travelling leaving aside the payment for telephone charges on his numerous calls. Obviously, he must be earning much more than disclosed.

The respondent further claims that his business would be affected if he were evicted. This court fails to see how this could be so given the nature of the respondent's profession. As a life insurance agent, his work should be involved more with seeing clients and liaising with his insurance company, certainly not by sitting at home though it may be his office. Communication with clients and potential customers will not be affected in this modern day by the aid of an economically available mobile phone.

After careful consideration of all the relevant factors, this court hereby allows the petitioner's application in prayer 2 of encl 8 and accordingly orders the respondent to vacate the said matrimonial home within seven days bringing with him only his personal belongings including the computer which he asserts is required for his work, provided always that this instrument belongs to him. The cost in this application will be cost in cause.

Application allowed.

Reported by Hanim Kamaruddin